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# **Finding a Compromise: The Struggle Between Federal Regulation And State Sovereignty – Analyzing The Effects Of *Mid-Con Freight Systems, Inc. v. Michigan Public Service Commission***

**By Cindy Lie\***

The wisdom of those who drafted our constitution and conceived our nation as functioning with three strong and independent branches have proven truly remarkable. It is the responsibility of every generation to be true to the founders' vision of the proper role of the courts in our society. If confirmed, I recognize that I will have a tremendous responsibility to keep our judicial system strong, and to help ensure that the courts meet their obligations to strictly apply the laws and the Constitution.<sup>1</sup>

## **I. INTRODUCTION**

The unique nature of the trucking industry in this country often requires drivers to travel across states to deliver goods. The logistical problems with coordinating such long haul travels are often complicated. To make matters worse, trucking companies have to deal with a vast number of regulations before they are allowed to conduct interstate travel. So, doesn't it make sense for Congress to

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1. Harriet Miers, at <http://www.quoteland.com> (last visited on Jan. 30, 2006).

simplify the amount of regulations imposed on trucking companies? And, should the States be allowed to impose more requirements on trucking companies in addition to the federal regulations? *Mid-Con Freight Systems, Inc. v. Michigan Public Service Commission* deals with these problems.<sup>2</sup> This case note will explore the Supreme Court's ruling in this case. Part II will outline the historical background of the law at hand. Part III will lay out the essential facts of the case. Part IV will analyze and critique the majority and dissenting opinions. Part V will discuss the legal, administrative, and societal impact of the holding. Finally, Part VI will conclude the case note.

## II. HISTORICAL BACKGROUND

### A. *The Supremacy Clause*

The United States Constitution provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”<sup>3</sup> This provision, known as the Supremacy Clause, has been a heavily litigated topic across the United States. This historical background will illustrate the evolution of the Supremacy Clause as applied by the Supreme Court.

In the landmark case, *Gibbons v. Ogden*, the Supreme Court held, “[i]n every such case, the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.”<sup>4</sup> In *Gibbons*, the Court found that a federal license issued under the Federal Coastal Act was supreme over a monopoly given by the State of New York because the state monopoly was inconsistent with the Federal Coastal Act.<sup>5</sup>

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2. *Mid-Con Freight Sys., Inc. v. Mich. Pub. Serv. Comm’n*, 125 S. Ct. 2427 (2005).

3. U.S. CONST. art. VI, cl. 2.

4. *Gibbons v. Ogden*, 22 U.S. 1, 211 (1824).

5. *Id.* at 240. The Court held that Gibbons’ licenses “were granted under an act of Congress, passed in pursuance of the constitution of the United States, gave full authority to ... navigate the waters of the United States ... any law of the State

Therefore, the Court determined that inconsistent state laws are inferior to federal laws.<sup>6</sup> This ruling lays out the foundation of the preemption doctrine.

In *Napier v. Atlantic Coast Line Railroad*, the Supreme Court was faced with the question of whether the federal Locomotive Boiler Inspection Act precluded the state of Georgia from regulating locomotive equipment for safety purposes.<sup>7</sup> The Court looked for a clear and manifested intent of Congress to preclude states from exercising their power.<sup>8</sup> To this end, the Court looked to see if Congress intended to “occupy the entire field of regulating locomotive equipment” through the federal law.<sup>9</sup> The Court held that it did, because the Act set the standard for locomotives, and thus had the power to require installation of certain equipment.<sup>10</sup> This approach to preemption is often referred to as “field preemption”, because a state law is deemed preempted by federal law if Congress intended to occupy the field at issue through the federal law.<sup>11</sup>

Modern Supreme Court decisions have used a more practical approach to preemption cases. In *Rice v. Santa Fe Elevator Corp.*, the Court started with the assumption that federal law would not be

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of New-York to the contrary ... is repugnant to the said constitution, and void.” *Id.* at 239-40.

6. *Id.* at 210.

[T]he States may sometimes enact laws, the validity of which depends on their interfering with, and being contrary to, an act of Congress passed in pursuance of the constitution, the Court will enter upon the inquiry, whether the laws of New-York ... have, in their application to this case, come into collision with an act of Congress ... Should this collision exist ... the acts of New-York must yield to the law of Congress.

*Id.* at 210.

7. *Napier v. Atl. Coast Line R.R.*, 272 U.S. 605, 607 (1926). The Georgia statute provided for, among other things, a requirement for an automatic fire door and cab curtains. *Id.* at 609-10.

8. *Id.* at 611.

9. *Id.*

10. *Id.* The Court found that Congress, through the Boiler Inspection Act, intended to confer upon the Interstate Commerce Commission the power to set the rules and regulations for locomotives. *Id.* This conferred power “extends to the design, the construction, and the material of every part of the locomotive and tender and of all appurtenances.” *Id.*

11. *Id.*

preempted unless there was a clear and manifest purpose of Congress to preclude state regulation.<sup>12</sup> There are four different ways to show Congress' intent to preclude state regulation.<sup>13</sup> First, the scheme of the federal law is so pervasive that Congress clearly intended to leave no room for the states to regulate further.<sup>14</sup> Second, the federal interest addressed is so dominant that states are assumed to have no authority to regulate the field.<sup>15</sup> Third, "the object sought to be obtained by the federal law and the character of obligations imposed by [state law] may reveal the same purpose."<sup>16</sup> Finally, the state

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12. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947). This case involved warehouse owners operating under a license issued pursuant to the United States Warehouse Act. *Id.* at 220. The Illinois Commerce Commission alleged that the warehouse owners were charging excessive rates in violation of the Illinois Public Utilities Act. *Id.* The Court looked to the purpose of the Act and found that Congress intended to "achieve 'fair and uniform business practices.'" *Id.* at 236 (quoting *Fed. Compress Co. v. MacLean*, 291 U.S. 17, 23 (1934)). Since the state of Illinois was trying to regulate in a way that was already regulated by the federal act, the state law must yield. *Id.*

13. *Id.* at 230.

14. *Id.* Petitioners in the *Rice* case argued that the federal scheme was limited and the States were free to regulate in those areas that are not covered by federal law. *Id.* at 229. The Court made the determination that the warehouses were used to store goods traveling in interstate commerce. *Id.* Therefore, the area of regulating these warehouses was in the federal domain. *Id.* The Court went on to analyze the language of the federal scheme and found that the Act included strong language to suggest that Congress intended for the federal law to stand independent of any state law. *Id.* at 233-34. In another preemption case, *Pennsylvania Railroad v. Public Service Commission of Pennsylvania*, the Court was asked to determine if a state law regarding railroad cars was preempted by the Safety Appliance Act. *Pa. R.R. v. Pub. Serv. Comm'n of Pa.*, 250 U.S. 566, 567 (1919). In that case, the Court said that the Safety Appliance Act imposed such elaborate regulations that the state act must be preempted. *Id.* at 569. Specifically, the Court ruled that "the paramount authority has gone so far that the statute of Pennsylvania cannot impose the additional obligation in issue here." *Id.*

15. *Rice*, 331 U.S. at 230. The Court illustrated this requirement clearly in *Hines v. Davidowitz*, 312 U.S. 52 (1941). *Hines* involved the validity of the Alien Registration Act. *Id.* at 60. The Court found that the area of foreign affairs, which includes immigration, is clearly within national powers. *Id.* at 62. Foreign relations is a field that should be exclusively in the hands of the federal government and, thus, the states should not be able to impose additional or conflicting regulations. *Id.* at 63.

16. *Rice*, 331 U.S. at 230. The Supreme Court cited other cases in the *Rice* opinion to further explain this third method. *Id.* at 230. In *New York Central*

regulation imposes obligations that would produce an inconsistent result with the objectives of the federal law.<sup>17</sup>

In *Ray v. Atlantic Richfield Co.*, a Washington state statute regulating tankers in Puget Sound was challenged under the Supremacy Clause as being preempted by the Ports and Waterways Safety Act of 1972.<sup>18</sup> The Court found that, even if Congress has not precluded states from regulating a particular field, a state statute is preempted if the statute conflicts with a valid federal law.<sup>19</sup> A conflict may be shown in one of two ways.<sup>20</sup> First, complying with both the state statute and the federal law is physically impossible.<sup>21</sup>

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*Railroad v. Winfield*, the Court was faced with a claim for worker's compensation under New York's Workmen's Compensation Law. *N.Y. Cent. R.R. v. Winfield*, 244 U.S. 147, 148 (1917). The claim was for a personal injury suffered by an employee of a railroad company. *Id.* at 152. The railroad company challenged the claim on the grounds that the Employer's Liability Act of Congress governed the claim exclusively and no claim could be made under the state law. *Id.* at 148. The Court found that Congress had exercised its power to regulate a carrier's liability for injuries sustained by employees; New York had no power to interfere. *Id.* at 152. Congress' legislation in that field manifests intent to preclude any other regulations. *Id.* Therefore, the purpose of the federal law and the requirements of the state law are the same, and the state law is precluded. *Id.*

17. *Rice*, 331 U.S. at 230. One example of how this method may be used to establish Congress' intent to preempt may be found in *Hill v. Florida*. *Hill v. Florida*, 325 U.S. 538 (1945). That case involved two laws, sections four and six of the Florida Act and the National Labor Relations Act. *Id.* at 539. The Court found that the Florida statute was precluded by the federal law because following the requirements of the Florida statute would produce inconsistent results with the purpose of the federal law. *Id.* at 542. Specifically, "if the Florida law is valid he could be found guilty of a contempt for doing that which the act of Congress permits him to do." *Id.* For that reason, the Court found that the Florida statute was preempted by the Federal Act.

18. *Ray v. Atl. Richfield Co.*, 435 U.S. 151, 154 (1978).

19. *Id.* at 154.

20. *Id.*

21. *Id.* The Court cited to another case to further explain this first method. *Id.* at 158. In *Florida Lime & Avocado Growers, Inc. v. Paul*, the Court stated the following as an example of how this method can be used to show federal preemption of a state law:

A holding of federal exclusion of state law is inescapable and requires no inquiry into congressional design where compliance with both federal and state regulations is a physical impossibility for one engaged in interstate commerce. That would be the situation here if, for example, the federal orders forbade the

Or, second, the state statute “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>22</sup> In *Mid-Con Freight Systems*, the Court analyzed the issue under this second type of conflict to determine if the Michigan law was preempted by the Federal Act.<sup>23</sup>

### *B. The Intermodal Surface Transportation Efficiency Act*

In 2002, the Court dealt with the Intermodal Surface Transportation Efficiency Act (ISTEA) for the first time. In that case, *Yellow Transportation, Inc. v. Michigan*, the issue was whether a state was allowed to collect registration fees in excess of those allowed by the ISTEA.<sup>24</sup> In the opinion, the Court provided some

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picking and marketing of any avocado testing more than 7% oil, while the California test excluded from the State any avocado measuring less than 8% oil content.

Fla. Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963).

22. *Ray*, 435 U.S. at 158 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). The Court applied this second type of conflict in *Geier v. American Honda Motor Co.*, a case that dealt with the issue of whether the National Traffic and Motor Vehicle Safety Act preempted a state tort law action. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861 (2000). The Court found that the state tort law stood in the way of accomplishing the objectives of the Federal Act. *Id.* at 881. The state tort law imposed a duty for automobile manufacturers to install airbags instead of other passive restraint systems. *Id.* The federal law was passed to give manufacturers the option of choosing between various passive restraint systems. *Id.* Therefore, the state action conflicted with the objective of the federal law and was preempted. *Id.*

23. *Mid-Con Freight Sys.*, 125 S. Ct. at 2434.

24. *Yellow Transp., Inc. v. Michigan*, 537 U.S. 36, 38-39 (2002). The petitioner in this case, an interstate trucking company, challenged the fees levied by Michigan on petitioner's trucks after the Single State Registration System (“SSRS”) came into effect under the ISTEA's fee cap provision. *Id.* at 42-43. The fee cap provision deemed any fee collected or charged in excess of those provided for by the ICC's fee system would be an unreasonable burden. *Id.* at 40. Michigan, prior to the implementation of the SSRS, entered into reciprocal agreements with other states, in which Michigan agreed to waive the annual registration fee for vehicles registered in another state that did not charge a fee for Michigan carriers. *Id.* at 42. For the years 1990 and 1991, Michigan did not levy any fees on petitioner, a Kansas based company, but did send petitioner a bill for the 1992 registration year. *Id.* The Court used the rule that, if the test of the statute does not unambiguously resolve the issue, then the agency's interpretation of the statute must be sustained. *Id.* at 45. The Court found that the ISTEA was silent as

insight into Congress' intent in passing the ISTEA. Specifically, the Court found that the ISTEA was passed to replace the older "bingo card" regime, which was administratively burdensome and inefficient.<sup>25</sup> Congress intended to delegate power to the ICC to impose regulations for the Single State Registration System and to resolve any ambiguities in the federal statute.<sup>26</sup> The Court referred back to this case for guidance in deciding *Mid-Con Freight Systems*.<sup>27</sup>

### III. FACTS

#### A. Essential Facts of the Case

*Mid-Con Freight Systems* is a consolidation of class actions, in which the plaintiffs are individual trucking companies.<sup>28</sup> The lawsuit began when plaintiff, Westlake Transportation Inc., filed a complaint alleging that various provisions of the Michigan Motor Carrier Act were unconstitutional because they were preempted by federal laws.<sup>29</sup> Another plaintiff, Troy Cab, Inc., joined the lawsuit on

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to reciprocity agreements but the ICC's interpretation of the ISTEA's fee cap provision was a reasonable interpretation. *Id.* at 45-46. The ICC's interpretation of the fee cap provision is as follows: "where a State waives its registration fee, its 'fee ... collected or charged' is zero and must remain zero." *Id.* at 38. This rule is consistent with the ISTEA's language and resolves any ambiguity. *Id.* at 48. Thus, the ICC's rule should be given deference. *Id.* at 46.

25. *Id.* at 39. Before 1994, interstate trucking companies were charged annual registration fees by the States of \$10 per vehicle or less. *Id.* As proof, the carrier vehicles would receive a stamp on a "uniform identification cab card" carried on each vehicle. *Id.* This was known as the "bingo card" system. *Id.*

26. *Id.* at 47.

27. *Mid-Con Freight Sys.*, 125 S. Ct. at 2433.

28. *Id.* See also *Westlake Transp. v. PSC*, 662 N.W.2d 784, 789 (Mich. App. Ct. 2003). This decision affirmed the decision of the Michigan Court of Claims that granted summary judgment in favor of the defendants. *Id.*

29. *Westlake Transp.*, 662 N.W.2d at 789. *Westlake Transportation, Inc., et al.*, filed their complaint on January 3, 1995. *Id.* They alleged that the \$100 fee imposed by Michigan on interstate and intrastate motor carriers was unconstitutional. They contended that federal laws, 11 U.S.C. §§ 11506 and 11501 preempted them. *Id.* This complaint began the litigation that led to the case being discussed in this case note, *Mid-Con Freight System, Inc. v. Michigan Public Service Commission*.



January 9, 1995.<sup>30</sup> In February 1995, intervening plaintiffs, two trucking companies, filed a complaint alleging that Michigan's intrastate decal fee violated the Commerce Clause.<sup>31</sup> In April 1995, the plaintiffs' cases were consolidated and the class action was certified.<sup>32</sup>

The Michigan law in question involves a requirement that carriers in the state of Michigan pay a \$100 fee for each vehicle registered in Michigan and operating entirely in interstate commerce.<sup>33</sup> The plaintiffs are interstate trucking companies whose trucks have Michigan license plates and operate entirely in interstate commerce.<sup>34</sup> Therefore, they fall under the scope of the state law in question.<sup>35</sup>

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30. *Id.* Other trucking companies are also named as parties in this case. *Id.* Troy Cab, Inc., *et al.*, filed their complaint on January 9, 1995. *Id.* The complaint contained similar allegations.

31. *Id.* The intervening plaintiffs alleged that the intrastate decal fee violated the Commerce Clause. *Id.* Plaintiffs Westlake Transportation, *et al.*, and the intervening plaintiffs proceeded to amend their respective complaints to adopt the others' substantive arguments. The cases were subsequently consolidated in April 1995 and the class actions were certified in June 1995. *Id.*

32. *See supra* note 28 and accompanying text.

33. MICH. COMP. LAWS ANN. § 478.2(2) (West 2002) states: "A motor carrier licensed in this state shall pay an annual fee of \$100.00 for each vehicle operated by the motor carrier which is registered in this state and operating entirely in interstate commerce."

34. *Mid-Con Freight Sys.*, 125 S. Ct. at 2431.

35. *Id.* Under the Commerce Clause of the Constitution, Congress has the power to regulate commerce among the several states. *See* CONST. art. 1, § 8, cl. 3. Therefore, trucks operating entirely in interstate should be regulated by Congress because they are considered an instrumentality of interstate commerce. *See* *Gibbons v. Ogden*, 22 U.S. 1, 189-90 (1824) (defining commerce as "the commercial intercourse between nations, and parts of nations, in all its branches"). Congress' power to regulate interstate commerce is complete and plenary; thus states are virtually precluded from regulating interstate commerce. *See* *Gibbons*, 22 U.S. at 209-10 (holding that Congress' power to regulate implies in its nature, full power over the thing to be regulated, it excludes, necessarily, the action of all others that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were, as well as to those which are altered. It produces a uniform whole, which is as much disturbed and deranged by changing what the regulating power designs to leave untouched, as that on which it has operated). States may, however, pass regulations for the purpose of regulating local activity as part of their own sovereignty as long as it is not in conflict with any act of Congress. Justice Marshall, in *Gibbons v. Ogden*, stated the following:

Related Michigan laws require that the carrier identify each truck's make, type, year, serial number, and unit number.<sup>36</sup> The truck will then receive a decal that must be affixed to the truck.<sup>37</sup> Carriers that pay this fee are exempt from the \$10 fee imposed by the Single State Registration System if the carrier chooses Michigan as the base state.<sup>38</sup>

The plaintiffs contend that the Michigan law is preempted by federal laws that regulate the same aspect of interstate trucking.<sup>39</sup> Specifically, 49 U.S.C. § 14504 imposes a registration requirement for motor carriers.<sup>40</sup> This is known as the Single State Registration System (SSRS) statute.<sup>41</sup> The SSRS sets forth a system that allows carriers to fill out a single set of forms for one state (the base State), which registers the vehicle's Federal Permit in all states that

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[I]n exercising the power of regulating their own purely internal affairs, whether of trading or police, the States may sometimes enact laws, the validity of which depends on their interfering with, and being contrary to, an act of Congress passed in pursuance of the constitution, the Court will enter upon the inquiry, whether the laws of [that state], as expounded by the highest tribunal of that State, have, in their application to this case, come into collision with an act of Congress, and deprived a citizen of a right to which that act entitles him. Should this collision exist, it will be immaterial whether those laws were passed in virtue of a concurrent power 'to regulate commerce with foreign nations and among the several States,' or, in virtue of a power to regulate their domestic trade and police. In one case and the other, the acts of [that state] must yield to the law of Congress.

*Gibbons*, 22 U.S. at 209-10.

36. See *Mid-Con Freight Sys.*, 125 S. Ct. at 2431.

37. See *id.*; Respondents' Brief at 3, *Mid-Con Freight Sys., Inc. v. Mich. Pub. Serv. Comm'n*, 125 S. Ct. 2427 (2005) (No. 03-1234).

38. See *Mid-Con Freight Sys.*, 125 S. Ct. at 2431. 49 U.S.C. § 14504 requires motor carriers to register with only one state. This state becomes the base state. See 49 U.S.C. § 14504 (2005).

39. Petitioners' Brief at 2, *Mid-Con Freight Sys. v. Mich. Pub. Serv. Comm'n*, 125 S. Ct. 2427 (2005) (No. 03-1234).

40. 49 U.S.C. § 14504(c)(1)(A) provides: "a motor carrier is required to register annually with only one state by providing evidence of its Federal registration."

41. 49 U.S.C. § 14504(c).

participate in the SSRS.<sup>42</sup> The statute provides that states are not allowed to impose any additional registration requirement.<sup>43</sup> Any further obligation that a state imposes constitutes an unreasonable burden on interstate commerce.<sup>44</sup> The state also may not require any decals or similar means of registration.<sup>45</sup>

### B. Case History

Petitioners first sought review of the Michigan law from the Michigan Court of Claims.<sup>46</sup> That court rejected their claim to invalidate Michigan's \$100 fee.<sup>47</sup> The Michigan Court of Appeals affirmed that decision.<sup>48</sup> Petitioners proceeded to seek leave to appeal to the Michigan Supreme Court.<sup>49</sup> That leave was denied.<sup>50</sup> The United States Supreme Court then granted the petition for certiorari and consolidated the case with *American Trucking Associations, Inc. v. Michigan Public Service Commission*, a case involving interstate trucking companies seeking review of a separate Michigan fee.<sup>51</sup>

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42. 49 U.S.C. § 14504(c)(1)(A)-(C).

43. 49 U.S.C. § 14504(b): "When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden."

44. *See supra* note 40 and accompanying text.

45. 19 U.S.C. § 14504(B)(iii).

46. *Westlake Transp., Inc. v. Mich. Pub. Serv. Comm'n*, 622 N.W.2d 784 (Mich. Ct. App. 2003).

47. *Id.* Petitioners sought to invalidate the Michigan law by contending that the federal SSRS statute preempted it.

48. *Id.* at 804 (holding that the Michigan law is not preempted by the federal statute because the \$100 fee imposed by Michigan is considered a "regulatory fee" and is not within the scope of the term "registration fee" as provided for in the SSRS statute).

49. *Mid-Con Freight Sys.*, 125 S. Ct. at 2431.

50. *Id.*

51. *Id.* *See also* *Am. Trucking Ass'ns v. Mich. Pub. Serv. Comm'n*, 545 U.S. 429 (2005).

## IV. ANALYSIS

*A. Justice Breyer's Majority Opinion*

Justice Breyer delivered the Court's opinion.<sup>52</sup> He began by establishing the main legal issue at hand, preemption.<sup>53</sup> The conflict arises between a Michigan law that imposes a fee on Michigan licensed trucks operating in interstate commerce, and a federal statute that provides that state registration requirements for motor carriers in excess of the standards outlined in the statute are an unreasonable burden on interstate commerce.<sup>54</sup> The Court's opinion starts the analysis by asking the question: does the federal statute preempt the Michigan law such that the Michigan fee requirement is unconstitutional and invalid?<sup>55</sup> To answer this question, the Court must look to whether the Michigan fee is the kind of state registration requirement to which the federal statute refers.<sup>56</sup> If the Michigan fee is considered a state registration requirement within the meaning of the federal SSRS statute, then the Michigan fee is an unreasonable burden on interstate commerce and cannot be upheld, because it is preempted by the federal SSRS statute.<sup>57</sup>

Justice Breyer proceeded to outline the background of federal laws regarding interstate motor carriers.<sup>58</sup> Motor carriers have long been required to obtain a Federal Permit in order to operate in

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52. *Mid-Con Freight Sys.*, 125 S. Ct. at 2429.

53. *Id.*

54. *Id.* The Michigan law at issue in this case is a provision of the Michigan Motor Carrier Act. MICH. COMP. LAWS ANN. § 478.2(2) (West 2002). The federal statute governing registration of motor carriers by a state is 49 U.S.C. § 14504 (2005).

55. *Mid-Con Freight Sys.*, 125 S. Ct. at 2430. The Constitution states that federal laws are the supreme law of the land, and therefore, preempt inconsistent state laws. *See supra* notes 2-20 and accompanying text. If the Michigan law is inconsistent with the federal statute, then the federal law controls, and the Michigan law must yield. *Id.* The case analysis will focus primarily on this issue.

56. *Mid-Con Freight Sys.*, 125 S. Ct. at 2430.

57. *Id.*

58. *Id.* Specifically, Justice Breyer is concerned with federal laws regarding requirements that interstate motor carriers obtain a permit to operate business in interstate commerce. *Id.*

interstate commerce.<sup>59</sup> Consequently, most states required proof that truckers had a Federal Permit by requiring the trucks to register with the state.<sup>60</sup> Under the old system, truckers would pay up to \$10 per truck for the state registration fee.<sup>61</sup> In turn, they would receive a stamp that is affixed to a multi-state “bingo card”.<sup>62</sup> That bingo card would be carried inside the vehicle.<sup>63</sup>

Congress soon realized the inefficiency of this bingo card system and established a new “Single State Registration System” or the SSRS.<sup>64</sup> Under this new system, motor carriers would only need to register with one state (the base state), which registers the Federal Permit in all participating states.<sup>65</sup> The SSRS statute provides that the states can require truckers to produce proof that the trucking company possesses a Federal Permit, proof of insurance, the name of a designated agent to receive service of process, and a total fee that is equal to the sum of individual state fees.<sup>66</sup> The trucks would then receive a receipt that would be carried with the vehicle.<sup>67</sup>

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59. *Id.*

60. *Id.* See 49 U.S.C. §302(b) (2) (1976). A Federal Permit is proof that motor carriers have complied with certain federal requirements, and thus, are allowed to operate in interstate commerce. *Mid-Con Freight Sys.*, 125 S. Ct. at 2430. States usually required truckers to file evidence of proof of having a Federal Permit with a state agency. *Id.*

61. *Mid-Con Freight Sys.*, 125 S. Ct. at 2430.

62. *Id.* The stamp serves as proof that the trucks have registered their Federal Permit with that state. *Id.*

63. *Id.* See also 49 C.F.R. §§ 1023.32, 1023.33 (1990). The bingo card contained stamps from all the different states that a truck has filed evidence with, and through which the trucks will travel. *Id.*

64. *Mid-Con Freight Sys.*, 125 S. Ct. at 2430. The SSRS is a part of the Intermodal Surface Transportation Act of 1991 (ISTEA). 49 U.S.C. § 14504 (2005). The Act still remains in effect today.

65. *Id.* The trucking company would only be required to fill out one set of forms and pay only one total fee instead of filling out separate forms and paying separate fees for each state with which it is registering its Federal Permit. *Id.* Under this system, filling out one form and paying one fee registers the Federal Permit with every state that is participating with the SSRS and through which the trucks will travel. *Id.*

66. *Id.* See also 49 U.S.C. § 14504(c)(2)(A). This section lays out the specific requirements that a state can demand when an interstate motor carrier registers its Federal Permit with that state. The requirements include filing and maintaining proof of a Federal Permit, proof of insurance, payment of a fee in accordance with

The SSRS statute contains a provision that was at issue in this case.<sup>68</sup> The statute provides that a state may not impose further obligations in excess of the standards provided.<sup>69</sup> The part in excess constitutes an unreasonable burden on interstate commerce.<sup>70</sup> The statute also states that the state may not require any stamps, decals, or similar registration means.<sup>71</sup> Also, any fee charged or collected outside of the SSRS system is deemed an unreasonable burden on interstate commerce.<sup>72</sup> However, if the state establishes a system that is in compliance with the SSRS, the state would be free from any Commerce Clause attack.<sup>73</sup>

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the fee system established in subsection (B)(iv), and the filing of a name of an agent for service of process. The fee system for the SSRS scheme is provided for in § 14504(c)(2)(B)(iv)(I)-(III) which states the following:

[The] fee system for the filing of proof of insurance...(I) based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates; (II) minimizes the costs of complying with the registration system; and (III) results in a fee for each participating state that is equal to the fee, not to exceed \$10 per vehicle, that such State collected or charged as of November 15, 1991.

*Id.*

The statute goes on to state that fees may not be collected for the purpose of filling and maintaining evidence of a Federal Permit. *See* § 14504(c)(2)(B)(v). Also, the charging or collection of fees that is not in accordance to the fee system stated above is prohibited and will be considered a burden on interstate commerce. *See* § 14054(c)(2)(C).

67. *Mid-Con Freight Sys.*, 125 S. Ct. at 2430. *See also* § 14504(c)(2)(B)(i): “The standards of the Secretary shall require that the registration state issue a receipt ... reflecting that the carrier has filed proof of insurance ... and has paid fee amounts in accordance with the fee system ... ”

68. *Mid-Con Freight Sys.*, 125 S. Ct. at 2430. *See also* 49 U.S.C. § 14504.

69. 49 U.S.C. § 14504(b).

70. *Id.*

71. 49 U.S.C. § 14504(c)(2)(B)(iii).

72. 49 U.S.C. § 14504(c)(2)(C).

73. *Mid-Con Freight Sys.*, 125 S. Ct. at 2431. The SSRS statute contains a provision that protects states who comply with the SSRS from a Commerce Clause attack. The provision states that state registration requirements that are in compliance with the standards of the Secretary are not an unreasonable burden on interstate commerce. *See* 49 U.S.C. § 14504(b).

Justice Breyer then looked at the Michigan law in question.<sup>74</sup> The Michigan Motor Carrier Act requires motor carriers licensed in the State of Michigan and operating entirely in interstate commerce to pay an annual fee of \$100.<sup>75</sup> Upon payment of this fee, trucks would receive a decal that is affixed to the truck.<sup>76</sup> The carrier is then exempt from the \$10 fee imposed by the SSRS if the carrier designates Michigan as the base state for the carrier.<sup>77</sup> The issue in this case was whether the Michigan fee is considered an obligation in excess of the SSRS and thus, an unreasonable burden on interstate commerce.<sup>78</sup>

### 1. The First Legal Question

The Court began its analysis by examining the actual wording of the statute.<sup>79</sup> In particular, Justice Breyer focused on the meaning and scope of the words, "State registration requirement."<sup>80</sup> If the Court chooses to interpret the words narrowly, as the respondent argues, then the limitations apply only to requirements that relate to

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74. *Mid-Con Freight Sys.*, 125 S. Ct. at 2431. See also MICH. COMP. LAWS ANN. § 478.2(2) (West 2002).

75. MICH. COMP. LAWS ANN. § 478.2(2) (West 2002). Other Michigan laws related to this legislation require the carrier to identify the interstate truck's make, type, year, and serial number. See Equipment List Form P-344-T, App. to Defendant's Response to Plaintiff's Motion for Summary Disposition, *Westlake Transp., Inc., v. Pub. Serv. Comm'n*, 662 N.W.2d 784 (Mich. Ct. App. 2003) (No. 95-15628-CM).

76. *Mid-Con Freight Sys.*, 125 S. Ct. at 2431.

77. *Id.*

78. *Id.*

79. *Id.* at 2432. The Court in *Rice*, laid out a four prong test to see if there is clear and manifest Congressional intent to preclude state legislation. See *supra* notes 10-15 and accompanying text. The third prong asks the question, does the law on its face evidence any federal intent to preempt? *Rice*, 331 U.S. at 230. Therefore, part of the modern day preemption analysis relies on looking at the federal law's text and language to look for Congressional intent to preclude state legislation. *Id.* This is the analysis that Justice Breyer chooses to start with for this case. *Id.*

80. *Mid-Con Freight Sys.*, 125 S. Ct. at 2432. The phrase "State registration requirement" appears in the second sentence of § 14504(b): "When a *State registration requirement* imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden" (emphasis added).

registration of interstate motor carriers based on their operation in interstate commerce.<sup>81</sup> The petitioners, however, argue that the words should be interpreted more broadly.<sup>82</sup> They contend that the limitations encompass any requirement imposed upon interstate motor carriers that constitutes some form of registration.<sup>83</sup> To resolve the conflict, Justice Breyer must determine the correct interpretation of the federal statute at issue in this case.

Justice Breyer tried to determine whether or not Congress intended to preempt local legislation by looking at the text, the historical context, and purpose of the statute itself.<sup>84</sup> This analysis is consistent with the third prong of the preemption test given by this Court in *Rice*.<sup>85</sup> That aspect of the test provides that the Court should look at the law itself to determine whether or not Congress had a clear and manifest intent to preempt state legislation.<sup>86</sup> The Court determined that the words, "State registration requirement" applies only to state requirements regarding evidence of a Federal Permit, proof of insurance, or name of an agent for service of process.<sup>87</sup> According to Justice Breyer, the scope of "State registration requirement" is extremely narrow and only encompasses the requirements laid out in this statute regarding those three subjects.<sup>88</sup>

The Court first examines the statutory language of the first sentence of § 14504(b).<sup>89</sup> The first sentence reads as follows:

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81. *Id.* See also Petitioners' Brief at 15, *Mid-Con Freight Sys. v. Mich. Pub. Comm'r*, 125 S. Ct. 2427 (2005) (No. 03-1234).

82. *Mid-Con Freight Sys.*, 125 S. Ct. at 2432.

83. See Respondents' Brief at 6, *Mid-Con Freight Sys. v. Mich. Pub. Comm'r*, 125 S. Ct. 2427 (2005) (No. 03-1234).

84. *Mid-Con Freight Sys.*, 125 S. Ct. at 2432.

85. *Id.* See also *Rice*, 331 U.S. at 230.

86. *Mid-Con Freight Sys.*, 125 S. Ct. at 2432.

87. *Id.* "The words 'State registration' in the preemption provision's first sentence refer only to state systems that seek evidence that a trucker has complied with specific, federally enumerated, SSRS obligations." *Id.*

88. *Id.* The Court came to this conclusion after establishing that the first sentence references the "standards of the Secretary," which are the specific requirements laid out in subsection (c). *Id.* Likewise, the whole statute is focused on those requirements. *Id.* The specific requirements are set forth in § 14504(c), including proof of a Federal Permit, proof of insurance, and name of an agent for service of process. 49 U.S.C. § 14504(c).

89. *Mid-Con Freight Sys.*, 125 S. Ct. at 2432. See also 49 U.S.C. § 14504(b).



The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c).<sup>90</sup>

The words “standards of the Secretary” refer to the standards set forth in section (c) of the same statute, which provides the specific requirements of evidence of Federal Permit, proof of insurance, and the name of an agent for service of process.<sup>91</sup> Therefore, according to Justice Breyer, the statute’s references to “State registration requirement” includes only those requirements relating to the specific items laid out in subsection (c).<sup>92</sup>

Similarly, in the second sentence, Justice Breyer interprets the words narrowly.<sup>93</sup> The second sentence reads, “[w]hen a *State registration requirement* imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.”<sup>94</sup> Following the same analysis of the first sentence, the

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90. 49 U.S.C. § 14504(b).

91. 49 U.S.C. § 14504(c)(2). The statute provides that states may require a motor carrier to produce four things: evidence of Federal registration, proof of required insurance, payment to the State of fees in accordance with the fee system established later in the statute, and the filing of a name for a local agent for service of process. *Id.*

92. *Mid-Con Freight Sys.*, 125 S. Ct. at 2432. According to Justice Breyer, the focus of the whole statute is with the specific SSRS requirements laid out in subsection (c). *Id.* Therefore, the text as a whole clearly indicates that the words “state registration” does not cover all registration requirements, only some. *Id.* (Kennedy, J., dissenting). Moreover, in section (a) of the SSRS statute, the term “standards” is defined as the “specification of forms and procedures required by the regulations of the Secretary to prove the lawfulness of transportation by motor carrier.” See § 14504(a).

93. *Mid-Con Freight Sys.*, 125 S. Ct. at 2433. In Justice Breyer’s words: “How could the same words in the second sentence refer to something totally different [than the words in the first sentence]?” *Id.* He fails to find any indication that the phrase “State registration requirement” in the second sentence, refers to all state registration requirements, instead of only those registration requirements related to the SSRS obligations. *Id.*

94. 49 U.S.C. § 14504(b) (emphasis added).

Court sees the words “State registration requirement” as referring only to the requirements provided by subsection (c).<sup>95</sup> Justice Breyer rejects the contention that the words include “all State Registration requirements ‘imposed on interstate carriers *by reason of* their operation in interstate commerce.’”<sup>96</sup> To read the words in any way different than the way it was interpreted in the first sentence would make the statute more complex than it should be.<sup>97</sup> Moreover, the Court was not able to find any other language elsewhere in the statute that would suggest the words refer to anything but the requirements set forth in subsection (c).<sup>98</sup>

The Court proceeded to look at the historical context of § 14504.<sup>99</sup> The federal SSRS statute was put in place for the purpose of replacing the older, more burdensome “bingo card” system.<sup>100</sup> Under

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95. *Mid-Con Freight Sys.*, 125 S. Ct. at 2432. See also *supra* note 90 and accompanying text.

96. *Mid-Con Freight Sys.*, 125 S. Ct. at 2433. This contention was put forth by the United States in an Amicus Curiae Brief. See Brief for United States as Amicus Curiae Supporting Petitioners at 19-20, *Mid-Con Freight Sys., Inc. v. Mich. Pub. Serv. Comm’n*, 125 S. Ct. 2427 (2005).

97. *Mid-Con Freight Sys.*, 125 S. Ct. at 2432. If the Court chose to read the phrase, “State registration requirement” in the second sentence differently than it read the words in the first sentence, the statute would become more complex than it should be. *Id.* As Justice Breyer puts it, “the dissent must resort to interpretive acrobatics” in order to avoid onerous results. *Id.* at 2433.

98. *Id.* See also 49 U.S.C. § 14504. Justice Breyer emphasizes that he sees “no language elsewhere in the statute suggesting that the term ‘State registration requirement’ refers to any kind of State Registration whatsoever that might affect interstate carriers.” *Mid-Con Freight Sys.*, 125 S. Ct. at 2433. Thus, the words in the second sentence must also be referring to state registration requirements that relate to the SSRS. *Id.*

99. *Mid-Con Freight Sys.*, 125 S. Ct. at 2433. Looking at the historical context of the statute is part of the third prong of the preemption test laid out in *Rice*. *Rice*, 331 U.S. at 230.

100. *Mid-Con Freight Sys.*, 125 S. Ct. at 2433. See also *Yellow Transp., Inc. v. Michigan*, 537 U.S. 36, 39-40 (2002). Under the old system, as discussed previously in this case note, truckers were required to register with each individual state that the truck wishes to travel through. *Mid-Con Freight Sys.*, 125 S. Ct. at 2430. This system required separate forms, separate fees, and separate stamps as proof of registration. *Id.* To remedy the inefficiency of the “bingo card” system, Congress put in place the SSRS scheme. *Id.* The new system was designed to ease the burden of registering with each state individually by allowing motor carriers to register its Federal Permit with one state, filling out one set of forms and paying

the old system, federal law did not govern the collection of any fees or taxes imposed by the State for any other purpose not within the "bingo card" system.<sup>101</sup> There were no limits to any state fees other than those relating to Federal Permit and insurance requirements.<sup>102</sup> Justice Breyer found no indication that Congress, when creating the new scheme, intended to broaden the preemptive scope of the older system.<sup>103</sup> The only difference between the old and new system is the efficiency afforded to interstate motor carriers of having to only register with one state instead of many.<sup>104</sup> The new statute only sought to expedite the process, not create more regulation.<sup>105</sup>

Justice Breyer finally turned to the statute's basic purpose or objective.<sup>106</sup> The statute was enacted for the primary purpose of "improving the efficiency of the 'bingo card' system and simplifying a uniform scheme for providing States with certain vital information

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one fee. *Id.* The trucks would then be registered with each participating SSRS state. *Id.*

101. *Mid-Con Freight Sys.*, 125 S. Ct. at 2433.

Indeed, federal regulations specified that the federal 'bingo-card' statute did not 'affect' the 'collection or [the] method of collection of taxes or fees by a State' from interstate truckers for the operation of vehicles within' its 'borders.' ... And they further provided that the statute did not 'affect' state requirements 'as to the external identification of vehicles to indicate the payment of a State tax or fee imposed for revenue purposes or for any other purpose' not governed by the 'bingo card' system.

*Id.* at 2433-34; 49 U.S.C. §§ 1023.104, 1023.42.

102. *Mid-Con Freight Sys.*, 125 S. Ct. at 2433.

103. *Id.* Justice Breyer looked to text, structure, and purpose of the statute and could not find any evidence of Congressional intent to have a broad preemption provision. Justice Kennedy, on the other hand, disagreed with this analysis. *Id.* at 2440 (Kennedy, J., dissenting). Justice Kennedy feels that the statute contains a broad preemption clause because it failed to "repromulgate regulations saving other state registration fees from preemption." *Id.*

104. *Mid-Con Freight Sys.*, 125 S. Ct. at 2433.

105. *Id.* "[W]hile the new regulations implementing the SSRS do not explicitly exempt unrelated state requirements from the statute's preemptive reach, neither they nor the rulemaking that produced them suggest any change to pre-existing practice in this respect." *Id.*

106. *Id.* This analysis conforms to the fourth prong of the test laid out in *Rice*. *Rice*, 331 U.S. at 230. This aspect the test looks to the federal statute's purpose and sees if the state regulation falls in the way of achieving that objective. *Id.*

....<sup>107</sup> Looking at the statute's purpose and objective is consistent with the fourth prong of the test set forth in *Rice*.<sup>108</sup> Here, the Court decided that there is no evidence of any Congressional intent to use this narrowly worded statute to regulate other state fees or obligations that do not relate to the SSRS requirements set forth in subsection (c).<sup>109</sup> Although the Commerce Clause may prevent States from regulating or imposing fees, Justice Breyer concludes that this particular federal statute contains no specific provision that prohibits states from passing any law that is not related to the SSRS requirements.<sup>110</sup>

## 2. The Second Legal Question

Having established that the federal statute governs only those State requirements that deal with the items set forth specifically in subsection (c), Justice Breyer proceeds to analyze the actual Michigan fee to see if it falls under the SSRS statute's scope.<sup>111</sup> First, the Michigan law does not contain any reference to requiring evidence of a Federal Permit, insurance, or agent for service of process.<sup>112</sup> The \$100 fee imposed by Michigan on the motor carriers does not relate to these subject matters.<sup>113</sup> Second, the fee imposed

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107. *Mid-Con Freight Sys.*, 125 S. Ct. at 2434.

108. *Id.* See also *Rice*, 331 U.S. at 230; *supra* note 103 and accompanying text.

109. *Mid-Con Freight Sys.* 125 S. Ct. at 2434. The Court gives examples of what the statute does not regulate. *Id.* "[A] State Registration requirement related to compliance by interstate carriers with rules governing the introduction of foreign pests into the jurisdiction, or with a State's version of the Amber Alert system, or with size, weight, and safety standards." *Id.* However, the Court notes that those types of regulations may or may not be barred by the Commerce Clause of the Constitution for putting unreasonable burdens on interstate commerce. *Id.* The Court's point is that this particular federal statute, the SSRS statute, does not specifically preclude those types of registrations because they are unrelated to the SSRS requirements. *Id.*

110. *Id.* See also *supra* note 106 and accompanying text.

111. *Mid-Con Freight Sys.*, 125 S. Ct. at 2435. This analysis involves the Michigan statute imposing a \$100 fee on interstate motor carriers with Michigan license plates. *Id.* If the statute concerns requirements related to the SSRS, then the statute is preempted. *Id.*

112. *Id.* See also MICH. COMP. LAWS ANN. § 478.2(2) (West 2002).

113. *Mid-Con Freight Sys.*, 125 S. Ct. at 2435.

by Michigan is consistent with fees that Michigan has imposed prior to the SSRS system and even prior to the old “bingo card” system.<sup>114</sup> Consequently, there is no evidence to show that the fee was imposed as a way to circumvent the SSRS system.<sup>115</sup> Finally, Justice Breyer points to the fact that Michigan motor carriers can comply with the SSRS statute, even if it chooses not to comply with the \$100 fee.<sup>116</sup> In other words, non-compliance with Michigan law does not bar the truck owner from complying with SSRS requirements.<sup>117</sup>

Justice Breyer, however, noted that there is a connection between the SSRS and the Michigan fee.<sup>118</sup> Michigan licensed interstate trucks need not pay the \$10 SSRS fee if the truck has already paid the \$100 Michigan fee and chooses Michigan as its base state.<sup>119</sup> However, that provision is only put in place as an “administratively efficient recompense.”<sup>120</sup> That connection alone cannot transform the Michigan fee that has no relation to SSRS requirements into an

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114. *Id.*

115. *Id.*

116. *Id.* The Court lays out the hypothetical as follows:

The owner of that truck can fill out Michigan form RS-1, thereby providing Michigan with evidence that it has a Federal Permit. It can also fill out form RS-2, on which it indicates the total SSRS fees it owes to all participating states whose borders the truck will cross. Upon submission of the two forms and payment of the fees, Michigan apparently will give the owner form RS-3, an SSRS receipt, a copy of which the owner can place in the vehicle of the truck, thereby complying with Michigan’s (and all other participating States’) SSRS-related ‘State registration requirements’. If that owner fails to pay Michigan’s \$100 fee for that truck, the owner will not receive a state fee decal. But that owner will have violated only Michigan’s \$100 fee statute here at issue.

*Id.* (citations omitted).

117. *Id.*

118. *Id.* The connection is found in Michigan form RS-2. *Id.* The form contains a list of all SSRS participating states and their related fees. *Id.* An asterisk is placed next to Michigan and provides that Michigan licensed trucks are exempt from the SSRS fee but need to obtain a Michigan decal by paying a \$100 fee. *Id.*

119. *Id.* See also *supra* note 115 and accompanying text.

120. *Mid-Con Freight Sys.*, 125 S. Ct. at 2436. The provision is more efficient because Michigan handles both fees. *Id.*

obligation that is prohibited by the SSRS statute.<sup>121</sup> Thus, the Michigan fee is not within the scope of the SSRS statute.<sup>122</sup>

The opinion concludes with Justice Breyer's holding that the SSRS statute does not preempt Michigan's \$100 fee, thus affirming the decision of the Michigan Court of Appeals.<sup>123</sup> The decision comes after the Court examined the statute itself to determine if there is evidence of federal purpose to preempt state legislation and the statute's objective to determine if the state law is inconsistent with the purpose of the federal law.<sup>124</sup> However, there are two other ways to look for evidence of a clear and manifest Congressional intent to preempt state legislation that the Court may have overlooked.<sup>125</sup>

First, if there is a pervasive federal regulatory scheme, then Congress intended to occupy that field of legislation.<sup>126</sup> Here, the federal regulatory scheme in question is the SSRS statute.<sup>127</sup> The statute provides a set of regulations designed to regulate interstate motor carriers registering their Federal Permit.<sup>128</sup> The statute lays out a specific list of requirements that the motor carrier must provide in order to comply with the statute.<sup>129</sup> The specificity of the statute's requirements indicates the fairly narrow scope of the federal statute. By clearly delineating what States can and cannot require, Congress

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121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Rice*, 331 U.S. at 230. The court in *Rice* laid out a four prong test for preemption. *Id.* First, is there a pervasive federal regulatory scheme, such that Congress intended to occupy that field of legislation? *Id.* Second, is there a dominant federal regulatory interest in that field, such that a uniform set of federal regulations is more appropriate? *Id.* Third, does the federal law evidence any intent to preempt? *Id.* And finally, is the state statute inconsistent with the objectives of the federal law? *Id.* The third and fourth prongs are addressed in the court's analysis. *Mid-Con Freight Sys.*, 125 S. Ct. at 2427-36. However, the first two prongs have not yet been addressed.

126. *Rice*, 331 U.S. at 230. *See also Fla. Lime & Avocado Growers*, 373 U.S. at 147-48 (holding that a California marketing order that conflicted with federal rules was not preempted by the federal statute because the federal statute merely aimed to establish minimum standards, not displace all state regulations).

127. *Mid-Con Freight Sys.*, 125 S. Ct. at 2428.

128. *See* 49 U.S.C. § 14504.

129. *See* 49 U.S.C. § 14504(c).

did not intend to design a federal regulatory scheme that is so pervasive that it reaches all types of interstate motor carrier registration.<sup>130</sup> Rather, the statute's purpose is to regulate the registration of an interstate motor carrier's possession of a Federal Permit, proof of insurance, and the name of an agent for service of process.<sup>131</sup> Therefore, there is no indication that with this particular SSRS statute Congress intended to preclude all other State laws regarding other types of registration not related to the SSRS requirements.<sup>132</sup>

Second, if there is a dominant federal interest in this particular field, then it is more likely that Congress intended to have a uniform set of federal regulations.<sup>133</sup> The field at issue in this case is the registration of interstate motor carriers.<sup>134</sup> Under the Commerce Clause of the Constitution, Congress has the power to regulate the channels and instrumentalities of interstate commerce.<sup>135</sup> Since interstate motor carriers are considered instrumentalities of interstate commerce, the subject is more suitable for uniform federal

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130. *Id.* The statute specifically states: "[T]he State of registration shall fully comply with standards prescribed under this section." *Id.* The statute proceeds to list the specific requirements that the State may impose on interstate truckers. *Id.* They include, evidence of a Federal Permit, proof of insurance, payment of fees, and the filing of a name of a local agent for service of process. *Id.* Furthermore, the statute establishes specific standards for the fee system that the registration State must implement. *Id.*

131. *Mid-Con Freight Sys.*, 125 S. Ct. at 2434. See also 49 U.S.C. § 14504(c)(2)(A).

132. *Mid-Con Freight Sys.*, 125 S. Ct. at 2434.

133. *Rice*, 331 U.S. at 230. See also *Fla. Lime & Avocado Growers*, 373 U.S. at 143. In that case, the Court contemplated the nature of the avocado industry. *Id.* The Court determined that the subject matter was not appropriate for uniform federal regulations. *Id.* at 144. In fact, the Court found the subject as one that the Court had traditionally preferred local regulations. *Id.* "Specifically, the supervision of the readying of foodstuffs for market has always been deemed a matter of peculiarly local concern." *Id.* Therefore, under the second prong of the preemption test, the California statute in this case was not preempted by the federal regulation. *Id.*

134. *Mid-Con Freight Sys.*, 125 S. Ct. at 2427.

135. U.S. CONST. art. VI, cl. 2. See also *Gibbons*, 22 U.S. at 196 (holding that the power to regulate commerce is vested in Congress completely and includes the regulation of commerce among the several states).

regulation.<sup>136</sup> Interstate motor carriers regularly travel across state lines, so there is a dominant federal interest to maintain a uniform set of federal regulations.<sup>137</sup> Having diverse, individual state regulations would make it harder for interstate trucks to comply with safety regulations and other obligations imposed by the individual states.<sup>138</sup> Consequently, the regulation of interstate motor carriers is a field that is more appropriate for uniform federal regulations.<sup>139</sup>

After examining the federal statute using the four prongs of the *Rice* test for Congressional intent, it seems that the federal statute does not preclude state regulation of interstate motor carrier registration that does not relate to the SSRS requirements.<sup>140</sup> Even though the subject of interstate motor carriers is not suitable for state regulation, the statute's text, basic purpose, and scope indicates that Congress only intended to preclude state regulation that relates to the possession of a Federal Permit, proof of insurance, and the name of an agent for service of process.<sup>141</sup>

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136. See *Gibbons*, 22 U.S. at 196. The Court said, "[t]he power of Congress ... comprehends navigation, within the limits of every State in the Union; so far as that navigation may be, in any manner, connected with 'commerce...among the several States.'" *Id.* The *Gibbons* case involved boats operating in interstate commerce, but the principle can also be applied to trucks that operate in interstate commerce. *Id.* The Court clearly indicated that all types of interstate navigation, no matter the nature, are within Congress' power. *Id.*

137. *Id.* See also *United States v. Locke*, 529 U.S. 89, 99 (2000). In that case, the Court articulated:

The State of Washington has enacted legislation in an area where the federal interest has been manifest since the beginning of our Republic and is now well established. The authority of Congress to regulate interstate navigation, without embarrassment from intervention of the separate States and resulting difficulties with foreign nations, was cited in the Federalist Papers as one of the reasons for adopting the Constitution.

*Id.*

138. *Locke*, 529 U.S. at 99.

139. *Id.*

140. See *Rice*, 331 U.S. at 230.

141. See *supra* notes 49-130 and accompanying text.



*B. Justice Kennedy's Dissent*

Justice Kennedy authored a dissenting opinion for this case.<sup>142</sup> He began by stating his disagreement with the Michigan Court of Appeals.<sup>143</sup> The Michigan Court of Appeals created a rule in which a fee is considered regulatory, and not a registration fee, if the purpose of the fee is to regulate an industry or service.<sup>144</sup> Applying that rule, the Michigan \$100 fee in question would be a regulatory fee, and not a registration fee, because the purpose was to enforce the Michigan Motor Carrier Act, which covers the costs of enforcing safety regulations.<sup>145</sup> Justice Kennedy emphasized that this rule is faulty because it would permit states to impose any fee by simply stating a regulatory purpose or using a portion of the fees collected to enforce some regulation.<sup>146</sup> The rule is too broad and would create undesirable results for future cases.<sup>147</sup>

Justice Kennedy then proceeded to explain his disagreement with the majority opinion.<sup>148</sup> First, Justice Kennedy critiqued the Court's textual interpretation of the SSRS statute.<sup>149</sup> The first sentence of § 14504(b) is a provision that preempts state registration requirements on interstate motor carriers that are not authorized under the SSRS.<sup>150</sup> In other words, state registration requirements that are "completed

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142. *Mid-Con Freight Sys.*, 125 S. Ct. at 2437 (Kennedy, J., dissenting). Justice Kennedy is joined by the Chief Justice and Justice O'Connor in his dissent. *Id.*

143. *Id.*

144. *Id.* See also *Westlake Transp.*, 662 N.W.2d 784, 794-96 (Mich. Ct. App. 2003).

145. *Mid-Con Freight Sys.*, 125 S. Ct. at 2438 (Kennedy, J., dissenting).

146. *Id.* Justice Kennedy also points out that the Court of Appeal's approach would exclude state requirement that involve the same subject matter as the SSRS because the purpose of the SSRS is to regulate interstate trucking and the fees collected were for administering that purpose. *Id.*

147. *Id.* "[T]he Michigan Court of Appeals' broad rule ... [would] work additional mischief in future cases, a most undesirable result in this area, where fees and regulatory requirements are so pervasive." *Id.*

148. *Id.* at 2438-39.

149. *Id.* Justice Kennedy disagrees with the Court's narrow interpretation of § 14504 because it departs from the statute's text. *Id.* According to Justice Kennedy, the statute's plain text clearly indicates that the Michigan fee is preempted. *Id.*

150. *Id.* See also 49 U.S.C. § 14504(b).

under standards of the Secretary” are not preempted by the SSRS.<sup>151</sup> However, the Court added to that provision by ruling that state registration requirements that are unrelated to the requirements specified in subsection (c) are also saved from preemption.<sup>152</sup> Justice Kennedy does not see any basis in the text of the statute that supports this addition.<sup>153</sup>

According to Justice Kennedy, the Court’s argument that, because the first sentence of the section refers only to the requirements set out in subsection (c), the second sentence must also be referring to the same requirements, is faulty.<sup>154</sup> The first sentence contains two terms that Justice Kennedy believes should be interpreted a certain way, “requirements of a State that [an interstate motor carrier] must register” and “registration requirement.”<sup>155</sup> These terms are only general references to any state requirements that interstate motor carriers register with the State.<sup>156</sup> This meaning is also applicable to the term, “State registration requirement,” found in the second sentence.<sup>157</sup> However, when read in context, the first sentence protects state registration requirements that are “completed under the standards of the Secretary.”<sup>158</sup> The second sentence is a preemption provision against all other state registration requirements of interstate motor carriers.<sup>159</sup>

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151. 49 U.S.C. § 14504(b).

152. *Mid-Con Freight Sys.*, 125 S. Ct. at 2439.

Title 49 U.S.C. §14054(b), by its terms, saves from preemption only one class of state registration requirements imposed on interstate motor carriers: those completed under standards of the Secretary under §14504(c), i.e., those that are authorized under the SSRS. To this subset the Court adds a second class of state registration requirements saved from preemption: those that concern subject matters not covered under §14504(c).

*Id.*

153. *Id.* at 2440.

154. *Id.*

155. *Id.* See also 49 U.S.C. § 14504(b).

156. *Mid-Con Freight Sys.*, 125 S. Ct. at 2439.

157. *Id.*

158. *Id.* at 2440.

159. *Id.* The Court’s statement that the statute contains no language that suggests “State registration requirement” refers to any type of registration requirement for interstate motor carriers is irrelevant because the statute clearly

Justice Kennedy then addresses the Court's use of statutory history to support its argument.<sup>160</sup> The majority opinion reasoned that since pre-SSRS federal laws contained narrow preemption provisions, the SSRS statute has the same preemptive effect.<sup>161</sup> Justice Kennedy, on the other hand, believes that Congress did intend to expand the preemptive scope when it passed the new scheme.<sup>162</sup> The statute does contain a broader preemption provision because the statute does not have the same preemptive provisions as the older statute.<sup>163</sup> The failure to put in the same, or similar, provisions is evidence of Congressional intent to expand the preemptive scope of the new statute.<sup>164</sup>

Justice Kennedy proceeds to critique the Court's final reason for interpreting the SSRS statute narrowly, the statute's basic purpose.<sup>165</sup> Justice Breyer found that the SSRS statute was put in place for the basic purpose of replacing an older, more burdensome, system.<sup>166</sup> Therefore, the main concern of the SSRS was increasing

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indicates its preemptive scope. *Id.* at 2439-40. Thus, there is no need to look for confirmation in the statute's history or other provision. *Id.* at 2440.

160. *Id.*

161. *Id.* Justice Kennedy concedes that the Court is correct to say that the old "bingo-card" statute did not preempt state fees that do not relate to Federal Permits or insurance. *Id.* at 2440-41. However, Justice Kennedy does not see the relevance of this observation. *Id.* In his opinion, the preemptive scope of the statute that preceded § 14504 says little about the preemption effect of the current statute. *Id.* Instead, Justice Kennedy feels that the lack of new provisions in the statute indicates that the federal agency intended to expand the preemptive scope. *Id.*

162. *Id.*

163. *Id.* "[T]he failure to repromulgate regulations saving other state registration fees from preemption suggests that the federal agency charged with implementing the SSRS did think that § 14504(b) expanded the scope of federal preemption." *Id.*

164. *Id.* at 2441. Justice Kennedy disagrees with the majority's use of historical comparison with preceding statutes because, according to him, comparison with prior statutes is only permissible when the current statute is ambiguous. *Id.* Here, the text of the statute is clear, thus there is no need to look at the previous scheme and create additional ambiguity. *Id.*

165. *Id.*

166. *Id.* Justice Kennedy points out that the Court "makes no convincing argument that § 14504(b)'s purpose was so limited." *Id.*

efficiency.<sup>167</sup> According to Justice Kennedy, the Court failed to establish why the statute's purpose requires the Court to read the statute so narrowly.<sup>168</sup> The only reason provided by Justice Breyer was that the statute contains no indication that Congress intended for the SSRS statute to have a broader preemptive effect.<sup>169</sup> However, as Justice Kennedy discussed earlier, there is an indication that Congress did intend to do so.<sup>170</sup> The lack of legislative history is not a valid reason for narrowly interpreting an otherwise clear and broad statute.<sup>171</sup>

In Justice Kennedy's view, the majority's reading of the term "State registration requirement" was not correct because the phrase was limited to state registration requirements that relate to the SSRS requirements.<sup>172</sup> Justice Kennedy, on the other hand, found that the phrase is better read to mean state registration requirements that are imposed solely for the fact that an entity is an interstate motor carrier.<sup>173</sup> Under this view, § 14504(b) would only preempt state

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167. *Id.*

168. *Id.*

169. *Id.* The majority and dissenting opinions of this case seem to have differing views on the meaning attached to the absence of statements in legislative history indicating an expansion or limitation of the preemptive scope of this statute. *Id.* For the majority, a lack of legislative history indicates that Congress intended to maintain the same preemptive scope as the preceding statute. *Id.* For the dissent, however, the absence of any statements in the legislative history indicates that the federal agency intended to broaden the scope of the preemptive provision. *Id.* at 2440.

170. *Id.*

171. *Id.* The dissent cites several cases to support this argument. *Id.* "[I]t would be a strange canon of statutory construction that would require Congress to state in committee reports or elsewhere in its deliberations that which is obvious on the face of a statute." *Id.* at 2441 (quoting *Harrison v. PPG Indus, Inc.*, 446 U.S. 578, 592 (1980)).

172. *Id.* at 2442. Justice Kennedy does note that the phrase is ambiguous because it could be interpreted as being an exemption for interstate motor carriers from any requirements that apply to all motor carriers. *Id.* Or, it could mean that only non-SSRS registration requirements that are imposed specifically on interstate motor carriers are preempted. *Id.* Justice Breyer, on the other hand, feels that the dissent undertakes "interpretive acrobatics" to come to its conclusion. *Id.* at 2433. Justice Breyer feels that the structure and language of the statute requires no such interpretation. *Id.*

173. *Id.* "[T]he more natural and sensible reading of the phrase 'requirement of a State that a motor carrier providing [interstate transportation] must register

registration requirements that single out interstate motor carriers.<sup>174</sup> Justice Kennedy feels that the question of whether or not the Michigan law in question is preempted by the SSRS statute is a question more suitable for remand.<sup>175</sup>

Finally, Justice Kennedy addresses Justice Breyer's critique that Justice Kennedy's reading of the statute would allow states to implement regulations in excess of the SSRS standards, as long as interstate motor carriers are not singled out.<sup>176</sup> The majority fails to take into consideration the restraints provided in the SSRS statute.<sup>177</sup> Justice Kennedy believes that the correct reading of the statute should lead to a scheme that is rational.<sup>178</sup> First, states, regardless of their participation in the SSRS, may not impose registration requirements that single out interstate motor carriers, unless the requirements comply with the SSRS statute.<sup>179</sup> Second, states that are participating in the SSRS may impose registration requirements that are general and neutral but incidentally affect interstate motor carriers unless the requirements violate the specific limitations provided by the SSRS.<sup>180</sup> Finally, states that are not participating in the SSRS can impose any registration requirements that are general and neutral, even if they relate to the specific SSRS requirements.<sup>181</sup>

According to Justice Kennedy, the majority's interpretation would lead to doubtful results.<sup>182</sup> For example, states would be allowed to impose any registration requirements, however irrational,

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with the State,' includes only those registration requirements that are triggered specifically by the fact that the entity in question is an interstate motor carrier." *Id.*

174. *Id.*

175. *Id.*

176. *Id.* The dissent concedes that the majority correctly noted that under Justice Kennedy's interpretation of the statute, general and neutral state requirements would not be preempted by the federal statute, even if they involved requirements similar to the SSRS. *Id.* However, the dissent is quick to emphasize that this would not mean that a State may impose outrageous obligations for proof of insurance, as long as the obligation applies to all motor carriers. *Id.* at 2442.

177. *Id.* at 2443. See also § 14504(c)(2)(B) for the statute's constraints on the base State's ability to require registration and fees for interstate motor carriers.

178. *Mid-Con Freight Sys.*, 125 S. Ct. at 2443.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

as long as the subject matter does not relate to the SSRS requirements.<sup>183</sup> Or, states that are not a part of the SSRS scheme, would not be allowed to impose any obligations on interstate motor carriers, if the registration requirement relates to evidence of a Federal Permit, proof of insurance, or agent for service of process.<sup>184</sup> Justice Kennedy feels that the Court relied on “flawed textual analysis and dubious inferences from legislative silences to impose the Court’s view of what it thinks Congress probably wanted to say.”<sup>185</sup> The dissent would recommend sending the case back to the lower courts for a remand to evaluate other arguments that were not considered by the Michigan Court of Appeals or this Court which might decide the outcome of this case.<sup>186</sup>

## V. IMPACT

The Court’s decision in *Mid-Con Freight Systems v. Michigan Public Service Commission*<sup>187</sup> will affect many future cases, especially in the field of preemption. This decision is one of the most recent in a long history of the Supreme Court’s struggle to find the perfect balance between upholding federal statutes as the supreme law of the land and allowing states to exercise their own police powers.<sup>188</sup> Furthermore, the subject of interstate commerce has

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183. *Id.*

184. *Id.* Justice Kennedy sums up his critique of the Court’s interpretation:

Under the Court’s interpretation, the statute does not pre-empt state regulations that single out interstate carriers for special burdens well beyond what the SSRS allows, but it does prevent non-SSRS States from applying a number of modest, evenhanded registration requirements to interstate carriers, even though the SSRS is not available to these States.

*Id.* at 2443-44.

185. *Id.* at 2444.

186. *Id.*

187. *Mid-Con Freight Sys. v. Mich. Pub. Serv. Comm’n*, 125 S. Ct. 2427 (2005).

188. See Mary J. Davis, *Unmasking the Presumption in Favor of Preemption*, 53 S.C.L. REV. 967 (2002). In this law review article, Davis discusses the long and puzzling history of the Supreme Court’s preemption cases over the last one hundred years. *Id.* at 968-69. Davis argues that the Court has long favored a presumption in favor of preemption, even though the Court has stated otherwise. *Id.* at 968. Historically, preemption cases have involved a variety of subject

always been a hotly litigated issue, and this case sheds more light on Congress' power over the matter.

### A. General Legal Impact

The most significant legal impact of the *Mid-Con Freight* decision is that states are not precluded from passing regulations on interstate motor carriers, as long as the regulation does not relate to SSRS requirements.<sup>189</sup> In other words, the federal SSRS statute only preempts state regulations regarding the registration of a Federal Permit, proof of insurance, and name of a local agent for service of process.<sup>190</sup> Other state registration requirements that have nothing to do with those three subjects are not considered an unreasonable burden on interstate commerce.<sup>191</sup> For example, states may be able to impose a fee for trucks that are a certain size or weight because the subject of size and weight are not specifically enumerated in the SSRS statute.<sup>192</sup>

Another significant impact is on the subject of preemption. In his opinion, Justice Breyer closely scrutinized the SSRS statute's text and language to find Congress' intent to preclude state legislation.<sup>193</sup> This is a good indication that the Court places a heavy weight on the face and plain meaning of federal statutes when looking for a clear and manifest Congressional intent to preclude state legislation.<sup>194</sup>

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matters, from state tort liability actions to cigarette labeling to railroad crossings. *Id.* at 968-69. Davis notes that the Supreme Court will continue to decide more preemption cases in the future in an effort to further clarify the doctrine. *Id.* at 969.

189. *Mid-Con Freight Sys.*, 125 S. Ct. at 2430.

190. *Id.*

191. *Id.* at 2430-31.

192. *Id.* at 2443-44 (Kennedy, J., dissenting).

193. *Id.* at 2432.

194. *Id.* See also Davis, *supra* note 188, at 971. Here, Davis discusses the evolution of the Court's preemption doctrine from a strong presumption of preemption, to a reliance on express preemption provisions, and finally to a focus on the concept of implied obstacle preemption. See also *Geier v. Am. Honda Motor Co.*, 529 U.S. at 881 (holding that federal statutes impliedly preempt state laws that stand as an obstacle to the accomplishment of federal objectives). This article was written in 2002, and with the *Mid-Con Freight* decision this year, it seems that the Court has gone more towards a reasoning based on the plain meaning and basic purpose of the federal statute.

Justice Breyer also focused on the basic purpose of the federal statute to see if the state law hinders the federal objective.<sup>195</sup> Therefore, the decision shows us that the Court favors the third and fourth prong of the *Rice*<sup>196</sup> test for preemption.<sup>197</sup> As a consequence, Congress must now place a greater importance on making its intent clear in the laws that it passes.<sup>198</sup> In order for the laws to be interpreted correctly by the Court, the intent of Congress must be clear and manifest in the language, text, and purpose of the federal statute they are writing.

Consequently, courts will now be responsible for interpreting the federal statute's text and analyzing its basic purpose when faced with a preemption case. This approach departs from prior cases, where the courts were often asked to speculate on Congressional intent by looking at implied obstacles. Justice Breyer's focus on language and purpose should lead to a clearer preemption doctrine.

#### *B. Impact on Administrative Law: State regulations on interstate trucking*

On the administrative law aspect of the decision, *Mid-Con Freight*<sup>199</sup> has more clearly defined the roles of the Interstate Commerce Commission and the state level agencies that regulate the trucking industry. The federal administrative agency, the Interstate Commerce Commission, is authorized by the SSRS statute to require

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195. *Mid-Con Freight Sys.*, 125 S. Ct. at 2434.

196. *Rice*, 331 U.S. at 218.

197. *Id.* at 230. The *Rice* case stands for the proposition that federal law does not preempt state law, unless there is clear and manifest Congressional intent indicating otherwise. *Id.* There are four ways to find a clear and manifest Congressional intent: (1) the federal regulation is so pervasive that Congress left no room for states to regulate, (2) there is a dominant federal interest in the field at issue, (3) the law evidences federal intent to preempt, and finally (4) the state regulation is inconsistent with the federal law's objective. *Id.*

198. See Davis, *supra* note 188, at 971. Davis, in her 2002 law review article, also calls for more Congressional clarity. "Many have called for Congress to speak its intent to preempt clearly; I join that chorus but with no anticipation that the song will be heard." *Id.* Her article goes on to argue that legislative clarity is important so that there is no need for the Court to undertake such extensive interpretations of federal statutes. *Id.* "In our federalist system, the Supreme Court should not be permitted to continue to affect the traditional operation of state law in the stealth manner that it has..." *Id.* at 972.

199. *Mid-Con Freight Sys.*, 125 S. Ct. 2427 (2005).



truckers to register their Federal Permit, proof of insurance, and name for a local agent for service of process.<sup>200</sup> The Court's decision in *Mid-Con Freight* limited the scope of that authority to those three enumerated subjects, thus allowing local state agencies to pass regulations that are unrelated to the SSRS statute without being deemed a burden on interstate commerce.<sup>201</sup>

This expansion of the State agency's power to regulate interstate trucks is a significant impact on the trucking industry. As a consequence of *Mid-Con Freight's* holding, states may follow Michigan's lead and impose \$100 fees or more on trucks licensed in their respective states by citing reasons unrelated to the SSRS. This result would be in direct opposition to the basic purpose of the SSRS statute.<sup>202</sup> Moreover, the ICC is now limited in its regulatory powers over the interstate trucking industry, defeating the original purpose for which it was formed.<sup>203</sup> Instead of having one entity uniformly regulating interstate trucks, we are now allowing individual states to pass their own regulations.

### C. Impact on Society

#### 1. Burdens on the trucking industry

Interstate commerce has always been a vital component of this nation's economy. As an instrumentality of interstate commerce, motor carriers play an important role in the country's commercial industries, transporting goods and services among states and commercial ports.<sup>204</sup> Thus, legislative and judicial decisions that

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200. 49 U.S.C. § 14504(a) (Supp. 2006).

201. *Mid-Con Freight Sys.*, 125 S. Ct. at 2443 (Kennedy, J., dissenting).

202. 49 U.S.C. § 14504. See also Alex N. Vogel, *Keep on Truckin': Rejection of the Interstate Commerce Commission's Interpretation of the Intermodal Surface Transportation Efficiency Act*, 64 GEO. WASH. L. REV. 1423 (1996). "Under the new single-state system, carriers were only required to register with one state...[t]his single act of registration served to 'satisfy the registration requirements of all other States'." *Id.* at 1425.

203. See also Vogel, *supra* note 196, at 1425. "Congress gave the ICC the task of designing and implementing a 'single-state' registration system." *Id.*

204. See Paul Stephen Dempsey, *Transportation: A Legal History*, 30 TRANSP. L.J. 235 (2003).

impact the trucking industry will also have a significant effect on the economy as a whole.

Allowing states to regulate interstate motor carriers, as long as the regulations are not related to SSRS requirements, could lead to a variety of onerous state level obligations imposed on interstate truckers.<sup>205</sup> Consequently, this decision will impact the operation of the interstate trucking business. By ruling that the SSRS statute only precludes state regulations regarding proof of Federal Permit, proof of insurance, and name of an agent for service of process, the Court has opened the door for state agencies to pass legislation regarding everything else.<sup>206</sup> As noted above, states may now be able to regulate the size of trucks, by requiring trucks of a certain size to register with the state or imposing fees related to truck size.<sup>207</sup> As a result, interstate motor carriers now carry the burden of complying with individual state registration requirements, in addition to the federal SSRS requirements. Tending to the burden of complying with both state and federal requirements may lead to higher administrative expenses, longer transport times, and ultimately, higher costs for the transported goods.

Historically, having a uniform system of regulation through the federal agency, the Interstate Commerce Commission, has served the trucking industry well.<sup>208</sup> Primary concerns, such as safety and rates,

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Transportation is also a fundamental component of economic growth. It is the infrastructure foundation upon which the rest of the economy is built. Any region, which loses access to the system, and thereby the means to participate in the broader market for the exchange of goods and services, will wither on the vine. Throughout history, it has been the recognition of the role transportation plays in social and economic development that has inspired a strong governmental presence in its promotion, facilitation, and regulation.

*Id.* at 239-40.

205. See *Mid-Con Freight Sys.*, 125 S. Ct. at 2443 (Kennedy, J., dissenting).

206. *Id.* "According to the Court, that statute permits States to impose on interstate carriers any number of onerous requirements so long as these requirements are not explicitly linked to the subjects covered by the SSRS." *Id.*

207. See *supra* note 186 and accompanying text.

208. See Dempsey, *supra* note 198, at 358.

Under economic regulation [of the ICC], the industry grew and prospered. Motor carriers became responsible, reliable and safe enterprises. Competition became healthy with modest

were handled through one entity instead of individual states. If today's decision starts a movement away from this centralized system, problems may arise in the nation's trucking industry.<sup>209</sup>

## 2. Burdens on the general public

If states do in fact impose additional registration requirements on interstate motor carriers, there will be a significant impact on the price of goods for the general public. For example, continuing with the hypothetical state registration requirement based on truck size mentioned above, a motor carrier that transports oversized goods in large trucks will have to spend more money than before because they will be obligated to register their truck with the state and pay an additional fee.<sup>210</sup> In other words, instead of having to comply with only the federal registration requirements, states may impose additional fees or requirements on interstate motor carriers before they may engage in interstate travel. This results in higher transportation costs which would ultimately lead to higher prices for the goods being transported.<sup>211</sup> The higher price directly impacts the retail price for consumers purchasing the goods.

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government oversight of rate levels and entry. Efficient and well-managed carriers earned a reasonable return on investment. The stability of the motor carrier industry provided a foundation for national economic recovery.

*Id.* at 287-88.

209. *See* Dempsey, *supra* note 198, at 358. Dempsey argues that deregulation of the transportation industry, and the ICC's declining authority led to a variety of problems.

The first two decades of deregulation were the darkest financial period of the airline, bus and trucking industries. They produced an unprecedented failure rate. More than 150 airlines went bankrupt. More than 1,000 motor carriers ceased operations every year beginning in 1983. More than half the general freight trucking companies disappeared.

*Id.*

210. *See supra* note 186 and accompanying text.

211. *See* Dempsey, *supra* note 198, at 360-361.

Whatever the truth on whether deregulation has benefited consumers, its impact on the industry itself was profound ... Alfred Kahn admitted, "There is no denying that the profit record of the industry since 1978 has been dismal, that deregulation bears substantial responsibility, and that the proponents of

## VI. CONCLUSION

The impact of the *Mid-Con Freight Systems*<sup>212</sup> decision will be felt far beyond the state lines of Michigan. The decision affects how thousands of trucking companies will conduct their interstate transport business, how much money the general public will spend on goods, and how states will pass legislation. The majority and dissenting opinions raised important, competing, issues and made strong arguments that could have swung the conclusion either way. In the end, the majority chose to go down a path that leads to preemption analysis that relies heavily on the plain meaning of the federal statute, and its basic objectives.<sup>213</sup> Furthermore, Justice Breyer's holding clearly stands for the proposition that the federal statute, 49 U.S.C. § 14054, does not preclude state requirements that are unrelated to evidence of a Federal Permit, proof of insurance, or name of a local agent for service of process.<sup>214</sup> Only time will tell whether this decision will open a floodgate for increased state regulations of interstate trucks, or if the effect will be limited to the Michigan statute at issue in this case. Either way, the Court's decision in *Mid-Con Freight*<sup>215</sup> has shed more light on the law of federal preemption and the regulation of interstate trucking.

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deregulation did not anticipate such financial distress - either so intense or so long-continued."

*Id.*

212. *Mid-Con Freight Sys.*, 125 S. Ct. 2427 (2005).

213. *Id.* at 2432-36.

214. *Id.*

215. *Mid-Con Freight Sys., Inc. v. Mich. Pub. Serv. Comm'n*, 125 S. Ct. 2427 (2005).

